

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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NOAH HANCOCK SIMMONS, II,

Plaintiff

-vs-

GIAMBRUNO, et al.,

Defendant

DECISION AND ORDER

04-CV-6610 CJS

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This is an action pursuant to 42 U.S.C. § 1983, in which Plaintiff, a prison inmate, proceeding *pro se*, is suing various employees of the New York State Department of Correctional Services (“DOCS”) for alleged violations of his federal constitutional rights.

On July 7, 2006, the Honorable Jonathan W. Feldman, United States Magistrate Judge, issued a Scheduling Order [#23], setting deadlines for the completion of discovery and the filing of motions. Subsequently, the parties conducted discovery. On September 7, 2006, Plaintiff filed a motion to compel discovery. On March 21, 2007, Judge Feldman denied the motion to compel, since the discovery that Plaintiff was seeking was not relevant to the claims in the instant case. (Decision and Order [#38]).

Plaintiff has made numerous motions for appointment of counsel, which the Court has denied. (See, Decisions and Order [## 44, 52, 60, 66, 69,74]).

On April 22, 2009, the Court issued an Amended Pretrial Order [#77], scheduling the trial in this matter to begin on December 14, 2009.

On June 15, 2009, Plaintiff filed a motion [#78] for discovery and for appointment of counsel. In connection with his request for discovery, Plaintiff indicates that Judge Feldman told him, “We do not allow discovery up here.” Plaintiff further alleges that

Defendants never made their Rule 26 disclosures.

Plaintiff's application [#78] is denied. Plaintiff's motion for discovery is denied for the simple reason that the allegations supporting it are patently false. Judge Feldman issued a Scheduling Order and permitted Plaintiff to conduct discovery, and Defendants filed their Rule 26 disclosures, and served them on Plaintiff, on August 30, 2006. (Docket No. [#29]). Moreover, Plaintiff's motion for appointment of counsel is denied for the reasons stated in the Court's prior Decisions and Orders denying the same relief.

#### CONCLUSION

Plaintiff's motion [#78] is denied.

SO ORDERED.

Dated:           Rochester, New York  
                  October 16, 2009

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge